

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:

ALL ACTIONS

BAP ADMINISTRATOR STATUS REPORT – 2nd QUARTER 2021

1. The Garretson Resolution Group, Inc. d/b/a Epiq Mass Tort serves as the Baseline Assessment Program (“BAP”) Administrator (“the Administrator”) for the Settlement program in the above-captioned action.¹ Since its appointment by the Court to serve in this role, the Administrator has worked diligently with Class Counsel and Counsel for the NFL Parties (“the Parties”) to meet its responsibilities under the Settlement Agreement. The Administrator submits this Status Report to provide an update to the Court on the status of the Administrator’s work implementing the BAP.

Effects of COVID-19 Pandemic

2. As a result of the COVID-19 pandemic, the BAP has continued to experience unusually heavy appointment cancellations by both Qualified BAP Providers and Retired NFL Football Players. During the 2nd Quarter of 2021, Qualified BAP Providers cancelled 200 appointments scheduled to take place by the end of the quarter, with an additional 149

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

appointments scheduled to take place in that period rejected or cancelled by Retired NFL Football Players. During that same period, Retired NFL Football Players attended 143 BAP appointments.

3. At the time of submission of this report, the Administrator continues to communicate with Qualified BAP Providers and Retired NFL Football Players with appointments scheduled during the coming weeks and months to confirm their intention to complete appointments, to minimize the disruptions associated with appointment cancellations, to prepare for resumption of affected BAP activities as soon it is feasible to do so, and to assure everyone associated with the BAP that there will be no negative consequences for appointment cancellations resulting from COVID-19. The Administrator continues to schedule appointments for later in 2021 to take advantage of any increase in Retired NFL Football Player and Qualified BAP Provider availability.

4. A notable exception to the negative effects of the COVID-19 pandemic has been the Administrator's efforts to collect and follow-up on medical records and reports from Qualified BAP Providers. At the beginning of the pandemic in the 1st quarter of 2020, the Administrator was in the process of following up with Qualified BAP Providers about mistakes or omissions in medical records and reports for 538 Retired NFL Football Players, which represented 9.7% of all Retired NFL Football Players who had attended both BAP exam appointments at the time. As of July 12, 2021, the Administrator is following up with Qualified BAP Providers about mistakes or omissions in medical records and reports for 127 Retired NFL Football Players, representing 2.2% of all Retired NFL Football Players who have attended both BAP exam appointments. (For additional details, see "Providing Reports from Baseline Assessment Examinations," starting at paragraph 14.)

Maintaining the Qualified BAP Provider Network

5. In implementing the BAP, the Administrator is responsible for maintaining a network of Qualified BAP Providers to administer the specified baseline assessment examinations under the BAP and authorized medical services under the BAP Supplemental Benefits program.

6. As of July 12, 2021, the Administrator has contracted with 314 Qualified BAP Providers in fifty-two metropolitan areas across the United States. The Administrator continues to diligently enroll Qualified BAP Providers to expand the BAP network wherever necessary to ensure sufficient depth of coverage and improve program efficiencies. For cities without sufficient contracted Qualified BAP Providers to fully meet demand, the Administrator continues to seek alternate arrangements to ensure timely appointments for Retired NFL Football Players. In the previous quarter, the Administrator accommodated demand for clinical neuropsychology appointments in cities with limited capacity by bringing Qualified BAP Providers from other cities with excess provider capacity to administer baseline assessment examinations. Specifically, the Administrator has utilized this approach in two cities with high concentrations of Retired NFL Football Players – Dallas and Seattle.

Baseline Assessment Examinations Scheduled and Attended to Date

7. The BAP offers a two-part baseline assessment examination, consisting of a clinical neuropsychology appointment lasting an average of six to eight hours and a basic neurological examination lasting approximately one hour. The Administrator's scheduling process is intended to ensure that Retired NFL Football Players are scheduled at a provider location, date, and time acceptable and convenient to them. Typically, the Administrator attempts to schedule the clinical neuropsychology appointment so that it occurs first, and far enough in advance of the neurology appointment that the clinical neuropsychologist's report is available for review during the neurology appointment.

8. As of July 12, 2021, the Claims Administrator of the Settlement program determined that 12,837 Retired NFL Football Players are eligible to participate in the BAP. Of these 12,837 individuals, the BAP Administrator has received requests to schedule baseline assessment examinations from 7,446 Retired NFL Football Players directly or through their attorneys. This represents 58.0% of BAP-eligible Retired NFL Football Players.

9. Of the 7,446 Retired NFL Football Players who have requested appointments, the Administrator has offered one or more appointments with Qualified BAP Providers to 7,429 of them (99.8%). Retired NFL Football Players who have requested appointments have waited a median time of 15 days until the Administrator secured and offered a neuropsychology appointment (consisting of a specific date, time, and location) from a Qualified BAP Provider neuropsychologist. To ensure the neuropsychology appointment takes place before the neurology appointment, the Administrator seeks to confirm with the Retired NFL Football Player or his attorney that the Retired NFL Football Player accepts the offered neuropsychology appointment before securing a neurology appointment. As a result of these activities, the median time between the initial offer of a neuropsychology appointment and the initial offer of a neurology appointment is 69 days. Median time from the initial request until the actual neuropsychology appointment is 107 days; the median time from request until the actual neurology appointment is 190 days. Table 1 summarizes wait times as of July 12, 2021.

Table 1. Appointment Scheduling Wait Times

Metric	Median in Days
Time from request to offered neuropsychology appointment	15
Time from offered neuropsychology appointment to offered neurology appointment	69
Time from request to neuropsychology appointment date	107
Time from request to neurology appointment date	190

10. As of July 12, 2021, 6,571 Retired NFL Football Players (88.2% of those who have requested appointments) have attended a total of 12,829 appointments. This number consists of 5,906 Retired NFL Football Players (79.3%) who have attended two or more² appointments and 665 Retired NFL Football Players (8.9%) who have attended one appointment.

11. Of the 7,429 Retired NFL Football Players for whom the Administrator has scheduled or offered one or more appointments, 6,690 (89.8% of those who have requested appointments) currently have one or more appointments scheduled (including appointments that have already taken place). Of the 6,690 Retired NFL Football Players with scheduled appointments, 6,079 (81.6% of all who have requested) have been scheduled for both neuropsychology and neurology appointments, and 611 (8.2% of all who have requested) have been scheduled for one appointment. For the latter group, the Administrator will continue to work to promptly schedule these Retired NFL Football Players' second appointments.

12. Of the 7,429 Retired NFL Football Players for whom the Administrator has scheduled or offered one or more appointments, 739 have had at least one appointment scheduled or offered to them in the past but have not attended any appointments and do not currently have any upcoming appointments scheduled. Of those 739 Retired NFL Football Players, 103 have had their requests closed due to lack of interest (after numerous attempts by the Administrator to schedule appointments on their behalf), while 636 are still active in the scheduling process. These 636 Retired NFL Football Players have had a total of 3,008 rejected, cancelled, or missed appointments (an average of 4.7 each). Table 2 breaks down the reasons and sources of those cancellations.

² Certain Retired NFL Football Players have attended more than two appointments because they and/or the Qualified BAP Providers have requested to break up the clinical neuropsychology appointments, which the Administrator has accommodated.

Table 2. Cancellation Reasons – Players with No Active Appointments

Cancellation Reason	Source³		
	Player	Provider	Administrator
Confirmed, then Cancelled	11.5%	5.3%	0.8%
Rejected or Withdrawn	52.5%	19.0%	2.5%
Missed	8.4%	0.0%	0.0%

More than half of these Retired NFL Football Players reside in or near eleven cities – Houston, Dallas, Los Angeles, Atlanta, Miami, Phoenix, New Orleans, Tampa, Orlando, Washington, DC, and Charlotte – all of which are among the cities with the highest populations of Retired NFL Football Players. The median time from request to clinical neuropsychology appointment offered among Retired NFL Football Players with no active appointments in these cities ranges from five days in Houston to 42 days in New Orleans, with an average of 16 days. In all such cases, the Administrator continues to work with Qualified BAP Providers, and Retired NFL Football Players or their attorneys, to ensure Retired NFL Football Players receive appointments that meet their preference for location, provider, and schedule, while accommodating the Qualified BAP Providers' schedules.

13. Finally, 17 (0.2%) Retired NFL Football Players have requested baseline assessment examinations but have not yet had appointments scheduled or offered to them. Table 3 summarizes Retired NFL Football Players with requests and appointments scheduled through July 12, 2021.

³ Note that these percentages may not add up to exactly 100% due to rounding.

Table 3. Summary of Requests and Scheduling Activity to Date

Status	Number	% of Requested⁴
Players requesting participation in BAP	7,446	100.0%
Players offered one or more appointments	7,429	99.8%
Players with two appointments currently scheduled	6,079	81.6%
Players with one appointment currently scheduled	611	8.2%
Players with appointments previously offered but none attended or currently scheduled (active)	636	8.5%
Players with appointments previously offered but none attended or currently scheduled (inactive)	103	1.4%
Players waiting for their first offered appointments	17	0.2%

Note: Indented rows are subsets of rows above.

Providing Reports from Baseline Assessment Examinations

14. As part of its efforts to ensure prompt and accurate production of medical records and reports, the Administrator conducts training sessions and offers guidance materials to each Qualified BAP Provider. The Administrator is in regular contact with Qualified BAP Providers as questions or issues arise that may slow the production of medical records and reports. To provide incentives for Qualified BAP Providers to submit medical records and reports in a timely manner, the Administrator included a provision in all its Qualified BAP Provider contracts that makes provider payment contingent on the Qualified BAP Providers submitting such documents.

15. Since inception of the BAP, the Administrator has received BAP-generated medical records and reports from at least one specialist (neurologist or clinical neuropsychologist) for 6,545 Retired NFL Football Players, comprised of reports from both specialists for 5,827 Retired NFL Football Players, and records from one specialist for 718 Retired NFL Football Players.

16. After receiving the medical records and reports, the Administrator reviews them for accuracy and completion, particularly against the requirements of the Settlement Agreement.

⁴ Note that these percentages may not add up to exactly 100% due to rounding.

17. When either the records or reports are incomplete, the Administrator works with the Qualified BAP Provider to ensure completion. The most common reasons for such follow-ups with providers include:

- a. Failure to clearly state what, if any, Neurocognitive Impairment level the Retired NFL Football Player qualified for, as defined by the Settlement Agreement;
- b. Omission of references to corroborating evidence, as required for diagnosing Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment under the Settlement;
- c. Failure to adequately address test validity and/or functional impairment, two topics required to be reported by clinical neuropsychologists as part of their reports; and
- d. Failure to meet other administrative requirements as articulated in the Clinician's Interpretation Guide promulgated pursuant to Exhibit A-2 of the Settlement Agreement.

18. Of the 5,827 Retired NFL Football Players for whom both reports have been submitted by Qualified BAP Providers, the Administrator has completed its review process for 5,674 and has published (or is in the process of publishing) them to the Retired NFL Football Player's online portal. Table 4 shows the status for Retired NFL Football Players whose reports have been submitted to the Administrator as of July 12, 2021.

Table 4. BAP Report Review Status

Status	Number	% of Players with Both Appts Attended⁵
Players who have attended both appointments	5,906	100.0%
Players with both reports submitted to the Administrator	5,827	98.7%
Players with review completed and approved to publish to portal	5,674	96.1%
Players with reports awaiting initial review	0	0.0%
Players with reports in follow up status with Qualified BAP Providers	159	2.2%
Players with reports undergoing review by the Appeals Advisory Panel due to conflicting diagnoses between Qualified BAP Providers (per the Settlement Agreement)	26	0.4%

Note: Indented rows are subsets of rows above.

19. As of July 12, 2021, BAP examinations have resulted in 222 diagnoses of Level 1 Neurocognitive Impairment, 192 diagnoses of Level 1.5 Neurocognitive Impairment, and 124 diagnoses of Level 2 Neurocognitive Impairment, with 5,136 Retired NFL Football Players receiving no diagnosis.

BAP Supplemental Benefits

20. Under the Settlement Agreement, a Retired NFL Football Player diagnosed with Level 1 Neurocognitive Impairment is eligible to receive BAP Supplemental Benefits related to the Retired NFL Football Player's impairment in the form of medical treatment, counseling, and/or examination by Qualified BAP Providers, including pharmaceuticals if medically appropriate and prescribed by a Qualified BAP Provider.

21. The Settlement Agreement required Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, to establish the maximum per-player benefit under the BAP Supplemental Benefits on the first anniversary of the commencement of the BAP.

⁵ Note that these percentages may not add up to exactly 100% due to rounding.

Accordingly, on June 6, 2018 (the first anniversary of the commencement of the BAP), Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, established a \$35,000 maximum per-player benefit under the BAP Supplemental Benefits. As of July 12, 2021, the maximum amount of funds billed for covered services to any one qualifying Settlement Class Member's account in the BAP Supplemental Benefits is \$16,566.11. As a result, the Administrator does not currently recommend changing the maximum per-player benefit. The Administrator will continue to monitor benefits received under the BAP Supplemental Benefits and will revisit the issue of maximum per-player benefits if one or more players' expenditures under the BAP Supplemental Benefits approaches the current maximum.

22. Once a Retired NFL Football Player's diagnosis of Level 1 Neurocognitive Impairment is finalized, the Administrator contacts the Retired NFL Football Player (or, in the case of a represented Retired NFL Football Player, his attorney or other legal representative) to inform him of his eligibility and schedule an orientation. Given that Retired NFL Football Players eligible for the BAP Supplemental Benefits suffer from moderate cognitive impairment, the Administrator seeks to include a family member or close friend of the Retired NFL Football Player during scheduling who can help the Retired NFL Football Player maximize program benefits. During this orientation, the Administrator outlines the benefits offered and solicits the Retired NFL Football Player's choice of a Qualified BAP Provider neurologist to perform an initial consultation. The purpose of the initial consultation is to review the results of the baseline assessment examination and determine a treatment and evaluation plan for the Retired NFL Football Player. Table 5 shows the status of Retired NFL Football Players who have been notified of their eligibility for participation in the BAP Supplemental Benefits, as of July 12, 2021.

Table 5. BAP Supplemental Benefits Participation Status

Status	Number
Retired Players/Attorneys notified of BAP Supplemental Benefits eligibility	212
Awaiting attorney response to schedule orientation	18
Retired Players in scheduling process for orientations	13
Retired Players with upcoming orientations scheduled	1
Retired Players with orientation complete	180
Awaiting provider selection by Retired Player	61
Contracting with selected provider	0
In process of scheduling initial consultation	15
Initial consultation upcoming	2
Initial consultation attended/receiving ongoing benefit	102

Note: Indented rows are subsets of rows above.

23. Finally, during the fourth quarter of 2019, the Administrator initiated a pilot program to evaluate the feasibility of offering cognitive rehabilitation therapy, a treatment that had been requested by several Settlement Class Members and their treating Qualified BAP Providers. This pilot program remains ongoing. As with all other BAP efforts, the progress of this pilot program has been affected by the COVID-19 pandemic.

Respectfully submitted,

BAP ADMINISTRATOR

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